IN THE SUPREME COURT OF IOWA

STATE OF IOWA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	S.CT. NO. 16-0955
	)	
WONETAH EINFELDT,	)	
	)	
Defendant-Appellant.	)	

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR DALLAS COUNTY
HONORABLE RANDY HEFNER, JUDGE (JURY TRIAL AND SENTENCING)

APPELLANT'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

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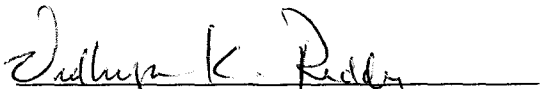
CERTIFICATE OF SERVICE

On August 30, 2017, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Wonetah Einfeldt, 611 SW 62nd St., Des Moines, IA 50312.

STATE APPELLATE DEFENDER



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ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because the issue raised in Division II involves a substantial question of enunciating or clarifying legal principles as well as of resolving a potential conflict between published decisions of the Iowa Supreme Court. See Iowa R. App. P. 6.1101(2)(b) & (f). Specifically, this Court's guidance is needed on the question of whether specific acts may be used to prove the violent or aggressive character of an alleged victim in an assault case where the defendant claims self-defense. Compare State v. Jacoby, 260 N.W.2d 828, 838 (Iowa 1977) ("the rule in Iowa... that the quarrelsome, violent, aggressive or turbulent character of a homicide victim cannot be established by *proof* of specific acts."), with State v. Dunson, 433 N.W.2d 676, 680-681 (Iowa 1988) ("evidence of a victim's subsequent acts is admissible in a criminal case to prove the victim's aggressive and violent character at the time of the earlier crime.").

STATEMENT OF THE CASE

Nature of the Case: This is an appeal by Defendant-Appellant Wonetah Einfeldt from her conviction, sentence, and judgment for Willful Injury Resulting in Bodily Injury, a Class D Felony in violation of Iowa Code section 708.4(2) (2015).

Course of Proceedings: On August 5, 2015, the State charged Einfeldt with Willful Injury Causing Bodily Injury, a Class D Felony in violation of Iowa Code section 708.4(2) (2015). (Trial Information) (App.4-6). Einfeldt's daughters Danielle and Beatrice Abang-Ntuen were also separately charged with the same offense in connection with the same incident. (10/21/15 State's Motion to Consolidate Trials) (App.7-8). At the State's request, all three Defendants' cases were consolidated for purposes of trial. (10/21/15 State's Motion to Consolidate; 1/28/16 Ruling on Motion to Consolidate) (App.7-15).

A combined jury trial for all three Defendants commenced on April 18, 2016. (Vol.2 Tr. p.144 L.1-5). The Defendants were prosecuted based on their direct criminal

liability, and not under aiding and abetting or joint criminal conduct theories. (Vol. 1 Tr. p.39 L.20-p.41 L.3); (4/8/16 State's Applic. to Amend TI) (App.17-18). Einfeldt and Danielle relied on the defense of justification, while Beatrice relied on a general denial. (2/8/16 Einfeldt Notice of Defense) (App.16); (Vol. 3 Tr. p.387 L.15-21, p.388 L.8-16, p.405 L.5-14). On April 22, 2016, the jury returned verdicts finding Einfeldt and Danielle guilty on the charged offense of Willful Injury Causing Bodily Injury, and finding Beatrice guilty on the lesser-included offense of Assault. (Tr. p.1146 L.16-p.1148 L.2, p.1149 L.25-p.1150 L.9, p.1151 L.17-1152 L.2).

Following the jury's return of a guilty verdict, Einfeldt filed a Motion for New Trial on several grounds, including the court's failure to suspend proceedings and order a Chapter 812 competency evaluation. The Motion for New Trial also challenged the court's failure to permit the jury to hear information regarding the alleged victim's criminal history, and regarding her involvement in a shooting of the Defendants' apartment building hours after the incident at issue.

(5/31/16 Mot. New Trial, ¶¶3 & 5) (App.31-32). The motion was denied. (Vol.7 Tr. p.1171 L.3-p.1173 L.20, p.1174 L.4-13).

Einfeldt's sentencing hearing was held on June 3, 2016. At that time, the district court entered judgment against Einfeldt for Willful Injury Causing Bodily Injury, a Class D Felony in violation of Iowa Code section 708.4(2) (2015). The Court sentenced Einfeldt to an indeterminate five year term of incarceration, imposed but suspended a $750 fine and 35% statutory surcharge, ordered that Einfeldt obtain a mental health evaluation and treatment while incarcerated, ordered payment of victim restitution in an amount to be determined and to be paid jointly and severally with Danielle, ordered submission of a DNA sample, and imposed a five-year No Contact Order with the alleged victim. (Tr. p.1211 L.2-p.1212 L.24); (Judgment and Sentence; 7/21/16 Order Nunc Pro Tunc) (App.33-35, 43-44).

Trial counsel filed a notice of appeal on June 3, 2016. (Certified Notice of Appeal) (App.36-38). Einfeldt also filed a

pro se notice of appeal on June 10, 2016. (Pro Se Notice of Appeal) (App.39-42).

Facts:

A. Trial Evidence:

The instant case arises out of a physical altercation between the Defendants (Wonetah Einfeldt and her daughters, Beatrice and Danielle Abang-Ntuen) and Mulika Vinson at Vinson's home on the evening of July 14, 2015.

The nature and circumstances of the altercation were in dispute at trial. The State claimed the Defendants attacked Vinson. (Vol.3 Tr. p.370 L.10-25). Einfeldt and Danielle, on the other hand, claimed they acted only in self-defense after Vinson brandished a gun and punched Danielle (who was pregnant at the time). (Vol.3 Tr. p.383 L.20-23, p.405 L.7-14). Beatrice denied involvement in the physical altercation, but she too claimed Vinson brandished a gun and threw the first punch during the incident. (Vol.3 Tr. p.381 L.3-21, p.992 L.21-p.993 L.1, p.997 L.18-22).

Vinson and Danielle had previously worked together at the Otley Cat restaurant where Vinson's boyfriend Jacob Peitzman also worked. Vinson's attitude and behavior toward Danielle soured after learning that Jacob had hit on Danielle. Interactions between Vinson and Danielle were tense for approximately a year-and-a-half before the physical altercation at issue. (Vol. 3 Tr. p.467 L.11-p.469 L.9; Vol. 4 Tr. p.783 L.17-p.784 L.7; Vol. 5 Tr. p.912 L.3-4). Danielle, who did not have a vehicle and had to walk everywhere, encountered Vinson frequently while walking to school, work, her mother's home (located three blocks from Vinson's), or her daily activities. According to Danielle, whenever Vinson saw Danielle walking down the street, Vinson would follow in her car shouting expletives and threats of bodily harm. In approximately December 2014, Danielle's mother (Einfeldt) had a talk with Vinson in an effort to calm the situation; Vinson apologized to Einfeldt and Danielle, and the dispute calmed down for a few months. However, when Jake Peitzman returned home from college for the summer, he and Danielle

resumed their friendship, and Vinson's threatening behavior resumed. Over the summer of 2015, the threats and harassing encounters from Vinson escalated and were occurring nearly every day or sometimes twice a day. Vinson also variously threatened Danielle's other family members, mistaking them for Danielle. (Vol. 5 Tr. p.910 L.10-p.917 L.22, p.944 L.3-p.945 L.16, p.986 L.8-p.989 L.7).

Peitzman and Vinson broke up just before the July 14, 2015 incident at issue herein. (Vol. 4 Tr. p.778 L.17-p.779 L.12). Danielle testified that on that day, as she walked to Einfeldt's home from school, Vinson stopped her car in Danielle's path, aggressively yelling harassing and threatening things at her. (Vol. 5 p.954 L.24-p.955 L.9). Danielle was eight or nine weeks pregnant at the time. (Vol. 5 Tr. p.931 L.25-p.932 L.7, p.946 L.19-21).

Danielle and Beatrice testified that, after Danielle arrived at Einfeldt's home, she discussed the latest incident with her mother (Einfeldt) and sister (Beatrice). The three decided to try speaking with Vinson in an effort to resolve the matter

calmly. Einfeldt had previously spoken with Vinson, acting as a peacekeeper, with positive results. (Vol. 5 Tr. p.954 L.24-p.955 L.12, p.991 L.7-p.992 L.7). However, when they arrived at Vinson's home and Einfeldt knocked on the door, Vinson reacted aggressively. Vinson stood in the screen door of her home brandishing a small black and silver handgun and saying she'd been waiting for Danielle and was going to "fuck [her] up." Vinson exited the home and Danielle backed up toward the street. Einfeldt positioned herself between Vinson and Danielle; she entreated Vinson to put the gun away and talk about the situation. Vinson told Einfeldt "I don't want a problem with you but I'm going to fuck this bitch (Danielle) up...." Vinson was not actively brandishing the gun at that point, but it was not known whether she still had the gun in her pocket or on her person. The group continued arguing, and Vinson came down the driveway and punched Danielle on her right cheek. While Danielle was crouched down in front of Vinson, Vinson grabbed her hair and continued punching her in the head. At that point, Einfeldt intervened by grabbing

Vinson. (Vol. 5 Tr. p.925 L.11-p.926 L.10-p.932 L.17, p.945 L.17-p.948 L.7, p.992 L.21-p.995 L.21, p.997 L.18-22, p.998 L.20-p.999 L.17). Danielle and Einfeldt fought with Vinson, fearing she might use the gun against them. At certain points of the struggle, Einfeldt was on the ground, and at certain points Vinson was on the ground. (Vol.5 Tr. p.932 L.22-p.933 L.25, p.935 L.7-p.937 L.8, p.953 L.20-p.954 L.11, p.999 L.18-p.1000 L.12). The fight lasted for approximately a minute-and-a-half. (Vol. 5 Tr. p.1001 L.22-24). Ultimately, a bystander (contractor Jeremy Cooper who was working on the house next door) approached, and the fight stopped. At that time, Danielle, Beatrice, and Einfeldt felt it was safe to leave and they started walking toward Einfeldt's apartment (located a few blocks away from Vinson's home). (Vol. 5 Tr. p.951 L.15-p.952 L.12, p.1020 L.5-18).

Police arrived about 30 seconds to a minute later. Police spoke with Einfeldt and Danielle curbside a short distance from the scene, and then again at the police station that evening. (Vol. 5 Tr. p.1005 L.2-21; Vol. 5 p.951 L.19-p.952

L.12). Einfeldt acknowledged striking Vinson, but told police that Vinson had confronted them and pulled a gun on them, and that Einfeldt had acted only in self-defense to protect herself and her daughters. (Vol. 4 Tr. p.595 L.7-25, p.607 L.24-p.609 L.6, p.649 L.2-9, p.654 L.2-17, p.666 L.23-p.667 L.19). Danielle also told police that Vinson was the aggressor, and that Vinson had pulled a gun then charged at and punched Danielle in the face. (Vol. 4 Tr. p.610 L.9-22, p.637 L.14-17, p.648 L.19-22; Vol. 5 p.953 L.11-19). Responding officers observed injuries on Einfeldt, namely cuts and scrapes to her knees, leg, feet, and palms. (Vol. 4 Tr. p.593 L.12-15, p.594 L.4-8, p.649 L.17-p.651 L.7). Einfeldt also noted all of her acrylic nails were ripped off during the incident, and police observed they were no longer on her hands. (Vol. 4 Tr. p.665 L.16-p.666 L.7). Police did not notice injury to Danielle, but a photograph taken of her at the police station shows swelling under her right eye, where she indicated she was punched by Vinson. (Vol. 4 Tr. p.651 L.18-p.652 L.13; Vol. 5 p.930 L.5-p.931 L.15) (Exhibit 29).

The State's witnesses included Vinson as well as two construction contractors (Nicholas Hardcastle and Jeremy Cooper) who were re-siding the home of Vinson's neighbor at the time of the altercation.

During trial, Vinson acknowledged making threats and harassing Danielle over a period of time, but claimed that the threats and harassment went both ways. (Vol. 3 Tr. p.469 L.10-25). Vinson also acknowledged "hav[ing] words" with Danielle's mother (Einfeldt) and using profanity towards her at some point, and that she subsequently apologized to Einfeldt. (Vol. 3 Tr. p.420 L.6-16). Vinson denied seeing Danielle on the day of July 14, prior to the altercation. She denied pulling up her car next to Danielle and threatening or harassing her while Danielle walked down the street that day. (Vol. 3 Tr. p.423 L.15-p.424 L.3). Vinson testified that on July 14, 2015 she was sitting in her living room watching television when she heard a loud knock on her door. She looked outside and saw Einfeldt at her door and Danielle and Beatrice further down the driveway. The main door was open and only the

screen door was closed, but she hadn't heard the three approach her home, and she hadn't known they were there until Einfeldt knocked. (Vol. 3 Tr. p.428 L.12-p.429 L.8). Einfeldt did not seem angry or confrontational when Vinson opened the door. (Vol. 3 Tr. p.481 L.23-p.482 L.1).

Due to a prior conviction, Vinson was not legally permitted to possess a gun. (Vol. 3 Tr. p.421 L.7-14, p.473 L.22-p.474 L.12). Vinson acknowledged that she had nevertheless recreationally fired Jake's father's gun on some farmland a few months before the altercation with the defendants. (Vol. 3 Tr. p.457 L.16-10, p.474 L.13-p.475 L.15). She described that gun as a small black or charcoal handgun, that it was small enough to fit in a pocket, and that she was told it would appropriately be used as a defensive weapon against another person. (Vol. 3 Tr. p.475 L.16-p.478 L.10). Vinson claimed she gave the gun back to Jake's father after firing it. (Vol. 3 Tr. p.457 L.11-20, p.474 L.24-p.475 L.1). She denied having or wielding any gun on the date of the altercation. (Vol. 3 Tr. p.457 L.25-p.458 L.10). She testified

that after arriving at her house Danielle and Einfelt started hitting and pulling on her, and then Beatrice jumped in as well taking her to the ground. She claimed that the first punch was thrown by Danielle and Einfeldt, not her. She denied throwing any punches at Danielle. (Vol. 3 Tr. p.436 L.15-20, p.437 L.13-p.438 L.17, p.455 L.25-p.456 L.12, p.527 L.14-17). Vinson had scrapes or abrasions on her shoulder, elbows, knees, and face, as well as black eyes, and required stitches to her lips. (Vol. 3 Tr. p.447 L.25-p.448 L.6; Vol. 4 Tr. p.580 L.3-12).

Vinson noted that after the altercation the mailboxes in front of her home were dented. She claimed they hadn't been dented prior to the date of the altercation. (Vol. 3 Tr. p.427 L.10-p.428 L.6). However, a google maps image of the home taken in July 2013 (two years before the altercation), showed the same damage to the mailboxes. (Vol. 4 Tr. p.767 L.14-20, p.761 L.1-13, p.771 L.4-p.774 L.3; State's Exhibit 8; D.A.N. Exhibits A-C).

Contractors Nicholas Hardcastle and Jeremy Cooper were doing siding work at the house of Cooper's father-in-law, which is located next-door to Vinson's house. (Vol. 4 Tr. p.687 L.25-p.688 L.3, p.689 L.1-19). They were present during the incident, but their observations were limited by the fact that they continued working during much of the incident, and the noise of their power tools as well as a radio they had playing. (Vol. 3 Tr. p.530 L.14-22, p.546 L.25-p.547 L.4; Vol. 4 Tr. p.696 L.10-14, p.720 L.10-p.721 L.13, p.731 L.3-18, p.733 L.12-13).

Hardcastle testified there was yelling back and forth between the Defendants and Vinson before the actual physical altercation took place. He testified that Vinson was yelling as well as the Defendants, and that Vinson was trying to intimidate Einfeldt and Danielle. During trial, he testified that it appeared such intimidation came from the position of Vinson trying to defend herself; however, during an earlier deposition, he had described it as the throw down or banter

both participants engage in before a boxing match. (Vol. 3 Tr. p.547 L.12-548 L.1,p.554 L.23-p.556 L.3).

Hardcastle believed the physical contact commenced not with the throwing of a punch, but with "grappling." He testified that Vinson first stuck out her arm, and Danielle then reached out and grappled with Vinson. (Vol.3 Tr. p.554 L.6-22). He believed that, after the grappling commenced between Danielle and Vinson, Einfeldt stepped in. (Vol. 3 Tr. p.548 L.2-11). He testified that Vinson and the Defendants exchanged punches for a bit, and that Vinson was eventually taken to the ground where Defendants kicked her and pulled her hair. (Vol. 3 Tr. p.536 L.9-21). He testified that Vinson got a few good punches in during the altercation. He did not see where Vinson's punches landed. (Vol. 3 Tr. p.551 L.18-24). Hardcastle testified he did not have the clearest memory on when a punch was thrown, but he believed that the first physical contact was made by Danielle and Einfeldt. (Vol. 3 Tr. p.535 L.16-p.536 L.7). However, he told police at the time of the incident that he couldn't provide information toward the

assault part of the altercation as he did not observe it. (Vol.4 Tr. p.620 L.3-19).

Hardcastle also testified he never saw or heard reference to a gun during the incident. (Vol. 3 Tr. p.540 L.5-13). However, Hardcastle did not see Einfeldt approach Vinson's door, or see what interaction she and Vinson had at the door. (Vol. 3 Tr. p.545 L.4-9). Hardcastle wasn't wearing his prescription eyeglasses during the incident, though he claimed that he could see without them. (Vol. 3 Tr. p.530 L.8-13). Additionally, he acknowledged it was possible he missed parts of the incident, as he was walking back and forth from the far side of the house he was residing. (Vol. 3 Tr. p.530 L.14-22, p.546 L.17-p.547 L.17). After the altercation ended, Hardcastle saw Vinson get inside her car, which was in the driveway. The car remained in the driveway, and Hardcastle was unsure how long Vinson was in the car. (Vol. 3 Tr. p.562 L.13-19).

Construction contractor Jeremy Cooper testified that during the early part of the altercation, before things had

gotten physical, he had gone inside his father-in-law's house to inform him what was going on. (Vol. 4 Tr. p.696 L.2-9). Although Cooper did not know Vinson, his father-in-law was Vinson's next door neighbor for four to five years. (Vol. 4 Tr. p.718 L.6-13). Contrary to Hardcastle, Cooper testified at trial that Vinson was calm and that he never heard her yell back at defendants during the verbal argument. (Vol. 4 Tr. p.697 L.15-25, p.725 L.4-13). He acknowledged that during an earlier deposition, he had stated that the yelling had gone both ways including from Vinson. (Vol. 4 Tr. p.725 L.16-22).

Cooper testified at trial that he had not observed any aggression or threatening gestures from Vinson prior to the incident turning physical. (Vol. 4 Tr. p.701 L.22-24). However, Cooper had continued working during the verbal part of the altercation, and did not observe the moment the altercation turned from verbal to physical. He testified that right before the altercation turned physical, he saw Vinson standing by the front of her vehicle and the Defendants standing to the rear of the vehicle. Cooper continued working,

and when he looked up again, the incident had already turned physical. He testified that at that point, he saw Defendants picking up and dragging Vinson along the passenger side door of the vehicle towards the road, where they punched and kicked her. (Vol. 4 Tr. p.700 L.7-p.701 L.21, p.720 L.10-p.722 L.24, p.724 L.6-21). Cooper pulled out his phone and took a short video of the altercation at that point (Exhibit 1). He then shut off his phone and walked towards the group to break up the fight. (Vol. 4 Tr. p.703 L.13-24). The fight lasted only a total of 30 seconds to a minute. (Vol. 4 Tr. p.737 L.25-p.738 L.2). He testified that he did not physically intervene, and that as he walked up the Defendants stopped and stepped back, yelled some words at Vinson and at Cooper which Cooper could not make out, then turned and walked off. (Vol. 4 Tr. p.705 L.10-23). Cooper called the police. (Vol. 4 Tr. p.706 L.5-8). His 911 call was received at about 8:30 p.m. (Vol. 4 Tr. p.598 L.17-20).

Cooper testified he did not see or hear anything about a gun during the altercation. (Vol. 4 Tr. p.716 L.16-p.717 L.2).

However, he acknowledged that his radio was blaring and it was difficult to understand the words being spoken by the participants to the altercation; he wasn't able to decipher any specific words at all during the commotion other than bits and pieces. (Vol. 4 Tr. p.725 L.23-p.726 L.15, p.731 L.6-15). He also wouldn't have known what was being said during the quieter part of the conversation before the louder verbal altercation broke out. (Vol. 4 Tr. p.726 L.16-p.627 L.5, p.748 L.5-19). Additionally, he acknowledged that he was inside his father-in-law's house for a couple of minutes during the verbal part of the altercation. (Vol. 4 Tr. p.719 L.16-p.720 L.4). When he went into his father-in-law's home, Vinson was still inside her house; when Cooper came back out of his father-in-law's house, Vinson was already outside. He did not see her exit her home and come outside. (Vol. 4 Tr. p.721 L.14-p.722 L.16, p.748 L.20-23). He also didn't see the beginning of the physical altercation. (Vol. 4 Tr. p.722 L.17-24, p.727 L.22-24, p.748 L.24-p.749 L.2). He acknowledged that during the time he was inside his father-in-law's house, it was possible Vinson

displayed a gun or took a swing at Einfeldt or Danielle. (Vol. 4 Tr. p.728 L.9-24). It was also possible that Vinson had displayed a gun while inside her home, but that the screen door had obscured his view of that gun. (Vol. 4 Tr. p.730 L.5-22). He also acknowledged that he had continued working, and was trying to mind his own business for some time, and that his attention was not solely on the altercation. (Vol. 4 Tr. p.720 L.10-p.721 L.13, p.731 L.6-15). He did not see the beginning of the physical fight. (Vol. 4 Tr. p.722 L.17-24, p.748 L.24-p.749 L.2). It was not until *after* he noticed something physical occurring that he stopped working, and his attention turned to the altercation. (Vol. 4 Tr. p.724 L.19-p.725 L.3). He acknowledged that because he did not see the beginning part of the incident, it was possible Vinson could have taken the first swing at Danielle or Einfeldt. (Vol. 4 Tr. p.729 L.8-18). The incident occurred very quickly, and was a stressful situation for Cooper. (Vol. 4 Tr. p.730 L.23-p.731 L.5).

After the incident, Vinson went inside her car for some period of time. (Vol. 3 Tr. p.517 L.22-519, p.562 L.13-19). Later (after police arrived), she also was in the restroom of her home for a few minutes. (Vol. 4 Tr. p.603 L.21-p.604 L.7). The Defendants noted that any gun wielded by Vinson could have been stowed in either the car or the home after the altercation. (Vol. 6 Tr. p.1069 L.17-p.1070 L.20). Vinson's home was not searched for a gun. While the officer did not notice a gun at the home when "casually looking around", no search of the home or the area was conducted. (Vol. 4 Tr. p.612 L.10-p.614 L.16).

B. Excluded Evidence:

During trial, Einfeldt sought introduction of certain evidence as bearing on her claim of self-defense. Einfeldt sought introduction of Vinson's (1) prior convictions for violent crimes, (2) prior threats against another woman, Lacey Chicoine, and (3) involvement in a subsequent shots fired incident at Einfeldt's apartment complex. The court excluded such evidence.

1). Vinson's Assaultive Convictions:

In 2001, Vinson had been convicted of "several assaults". The State filed a Motion in Limine seeking exclusion of those convictions as not involving dishonesty or a false statement. (4/8/16 State's Mot. Limine, ¶3c) (App.20). Einfeldt responded that she should be permitted to introduce Vinson's "past convictions indicating an assaultive past" as they would be highly probative on the issue of self-defense and defense of others, and bore on whether Einfeldt believed she was in danger of injury or death. (4/11/16 Response in Limine) (App.23-25).

The matter was discussed during an April 15, 2016 pretrial hearing. (Vol.1 Tr. p.81 L.1-3, p.88 L.3-14, p.97 L.1-p.100 L.23). At that point, it was clarified that the prior convictions at issue were: (1) a weapons charge, and (2) an assault on a corrections officer (committed while incarcerated on the weapons charge). Those offenses had been committed 15 and 12 years ago, respectively. (Vol.1 Tr. p.98 L.22-23,

p.99 L.2-8). The court ultimately reserved ruling on the issue at that time. (Vol.1 Tr. p.100 L.22-23).

The matter was again taken up at the time of trial. Einfeldt argued Vinson's prior offenses would go to previous contacts with weapons and issues with violence, thereby bearing on Einfeldt's self-defense claim. The district court reasoned that the convictions would be admissible only for credibility impeachment purposes, not as character evidence. The court indicated the convictions would be excluded due to a danger the jury would impermissibly consider them as character evidence. (Vol.3 Tr. p.356 L.1-p.359 L.12).

After the district court refused to admit Vinson's convictions as character evidence, Einfeldt alternatively requested and the court ruled that it would be permissible to ask the witness if she had been convicted of a crime punishable by more than a year in prison. (Vol.3 Tr. p.359 L.13-p.361 L.4). The court also allowed introduction of the fact that Vinson was not permitted to possess a firearm due to her prior conviction. (Vol.3 Tr. p.407 L.22-p.410 L.7).

However, the court prohibited any reference to the names of the prior crimes or to the violent or assaultive nature of the prior convictions.

2). Threats against Lacey Chicoine:

On April 14, 2016, the State filed an addendum to its Motion in Limine seeking to exclude as character evidence of the victim any testimony by Lacey Chicoine regarding Chicoine's having received threatening messages from Vinson. (4/14/16 Addend. To State's In Limine) (App.26-28). The district court made an in limine ruling declining to exclude such evidence, and determining it would be admissible on the justification issue but would first need to be addressed again at trial outside the presence of the jury. (Vol.1 Tr. p.113 L.9-p.114 L.19).

During trial, Danielle and Einfeldt made an offer of proof as to the proposed testimony of Lacey Chicoine. (Vol.4 Tr. p.791 L.4-18, p.821 L.7-8). Chicoine worked at the Otley Cat restaurant with Vinson, Danielle, and Peitzman. (Vol.4 Tr. p.776 L.12-p.777 L.13, p.793 L.10-12). Chicoine had dated

Jake Peitzman before Peitzman started dating Vinson. During two periods of time, Peitzman was dating Chicoine while also simultaneously dating Vinson. (Vol.4 Tr. p.792 L.1-p.793 L.8).

During the offer of proof, Chicoine testified that Vinson had repeatedly threatened to hurt her ("kick [her] ass", "beat [her] up", etc.) if she didn't stay away from Peitzman. (Vol. 4 Tr. p.793 L.19-p.794 L.23). Such threats were made verbally over the telephone, and also over text messaging. (Vol.4 Tr. p.798 L.15-p.799 L.9). The threats continued for about six months. (Vol.4 Tr. p.796 L.1-5). Danielle later briefly testified she was aware Vinson had threatened Chicoine, though she did not detail the nature or extent of those threats or that they were related to Peitzman. (Vol.5 Tr. p.909 L.24-25).

Following the offer of proof, the district court ruled that Chicoine's testimony regarding Vinson's threats against her in connection with the dispute over Peitzman was not relevant and, even if relevant was excludable under Rule 5.403 as more prejudicial than probative. (Vol.4 Tr. p.875 L.23-p.876 L.18, p.877 L.11-25).

3). Subsequent Shots Fired Incident:

Defendants sought to introduce at trial evidence that Vinson was involved in a shots fired incident at Einfeldt's apartment a few hours after the altercation with defendants. The matter of the shooting was discussed during a March 7, 2016 pretrial conference, when co-Defendant Danielle sought an additional deposition of Vinson relating to that incident. At that time, the court permitted additional deposition, but made a preliminary ruling that the subsequent shots fired incident was irrelevant and not admissible. (Vol.1 Tr. p.16 L.20-p.17 L.3, p.20 L.14-21, p.25 L.21-p.26 L.4, p.27 L.10-p.37 L.5).

The State later filed an in limine motion seeking exclusion of any reference to the shooting. (4/8/16 Mot. in Limine, ¶5) (App.21). Einfeldt resisted the in limine motion, arguing that the shooting of her home was relevant and highly probative of the nature of the relationship between the Defendants and Vinson, and supported Einfeldt's reasonable belief Vinson was a danger to the Defendants. (4/11/16 Def.'s Resp. in Limine, ¶5) (App.24). During an April 15, 2016

pretrial hearing, the district court sustained the State's request to exclude information relating to the shooting on an in limine basis, but clarified that its ruling was interlocutory only and that a final decision on admissibility would be taken up at trial. (Vol.1 Tr. p.81 L.1-3, p.82 L.2-3, p.101 L.10-p.108 L.10).

During trial, Defendants again raised the shots fired issue and made an offer of proof outside the presence of the jury. The Offer of Proof consisted of testimony from Jacob Harker (the father of Danielle's child), Police Officer Matthew Aswegan, Danielle, and Beatrice. (Vo.5 Tr. p.807 L.1-p.880 L.19).

The altercation at Vinson's home was reported to police at about 8:30 p.m. (Vol. 4 Tr. p.598 L.18-20). Vinson declined immediate medical treatment, but went to the hospital later at about 12:45 a.m. (Vol.4 Tr. p.579 L.20-22, p.626 L.11-16). At approximately 11:30 p.m., prior to the time Vinson would have been accounted for at the hospital, shots were fired into the apartment building where Einfeldt lived.

(Vol.5 Tr. p.825 L.6-7, p.844 L.4-7). Minutes before the shots were fired, Beatrice and Jake Harker (Danielle's boyfriend) saw Vinson and another individual walking by their apartment unit with Vinson peering inside the windows as if scoping the place out. Minutes after Vinson looked inside Einfeldt's window, Harker and Beatrice heard three shots fired. (Vol.5 Tr. p.807 L.7-24, p.808 L.24-p.810 L.3, p.811 L.10-19, p.812 L.25-p.815 L.7, p.818 L.10-13, p.856 L.6-p.857 L.25, p.858 L.16-p.859 L.2, p.861 L.24-p.862 L.19). Several people in the neighborhood reported to police that they heard shots, and Harker reported to police that he had seen Vinson there just before the shots were fired. (Vol.5 Tr. p.815 L.8-9, p.815 L.20-p.816 L.4, p.817 L.22-p.818 L.5, p.824 L.4-23, p.826 L.1-3).

Although responding officers did not initially notice any physical evidence, they were ultimately alerted to three 380-caliber shell casings in the roadway and later discovered three bullet holes in the brick exterior wall of the building. (Vol.5 Tr. p.825 L.23-p.827 L.1, p.828 L.18-21, p.833 L.3-5, p.849 L.7-24). Einfeldt lived in the building, and one of the shots were

fired into apartment 9 which is immediately next to Einfeldt's unit. The other two bullets were in the vicinity of the first, but did not go through the wall and enter an apartment. (Vol.5 Tr. p.827 L.2-p.827 L.21, p.829 L.15-20, p.848 L.24-p.849 L.16). The point at which one apartment ends and the other begins is not discernible from the building's exterior, and the bullets were near or at the point where Einfeldt's apartment begins. One of the bullets was just next to Einfeldt's kitchen window. (Vol.5 Tr. p.848 L.24-p.849 L.16, p.861 L.13-23, p.868 L.6-p.869 L.7). Responding Officer Matthew Aswegan noted in his report that it was "very possible" the bullets were intended for Einfeldt's apartment. (Vol.5 Tr. p.841 L.12-23). In the middle of the shell casings, law enforcement found a cigarette butt from a Kool brand cigarette. Officer Aswegan noticed the same type of cigarette butts at Vinson's home earlier in the evening, and Vinson admitted that she smokes that brand of cigarette. (Vol.5 Tr. p.833 L.15-p.835 L.6). The shell casings were also consistent and had "[v]ery similar characteristics" with the type of handgun Vinson admitted discharging with her

boyfriend Jake Peitzman approximately two months earlier in May and which the Defendants claimed was also used during the altercation at Vinson's home. (Vol.5 Tr. p.831 L.3-p.833 L.9). Vinson and Peitzman were listed as suspects in the shooting by law enforcement, but were never arrested. The shots fired investigation was still open and not resolved at the time of the instant trial. (Vol.5 Tr. p.830 L.3-10, p.840 L.3-6).

Following the offer of proof, the district court ruled that evidence of the shots fired incident would be excluded. The court held first that the evidence was not admissible under Iowa Rule of Evidence 5.405 because the character of a complaining witness in a self-defense case may only be proved by reputation or opinion testimony and not by specific instances of conduct. Second, the court held the evidence should also be excluded under Iowa Rule of Evidence 5.403 as more prejudicial than probative. (Vol.5 Tr. p.870 L.6-9, p.872 L.21-p.875 L.22).

Other relevant facts will be discussed below.

ARGUMENT

I. THE DISTRICT COURT ERRED IN FAILING TO SUSPEND THE PROCEEDINGS AND ORDER A CHAPTER 812 COMPETENCY EVALUATION.

A. Preservation of Error: During the course of trial, defense counsel requested that trial proceedings be suspended to allow for Chapter 812 competency proceedings. The district court declined to halt proceedings and order a competency examination. (Vol.4 Tr. p.565 L.1-p576 L.9). Defense counsel's competency challenge was renewed by way of a post-trial motion, which was again denied by the district court at the time of sentencing. (5/31/16 Mot. New Trial, ¶2) (App.31); (Vol.7 Tr. p.1167 L.11-13, p.1171 L.3-p.1173 L.20). Error was therefore preserved. See State v. Kempf, 282 N.W.2d 704, 706 (Iowa 1979) (finding error preserved when the court overruled defense counsel's objection that the defendant was incompetent to plead guilty).

Even if the issue of competency had not been raised in the district court, however, the appellate court would not be prevented from reviewing the matter. Traditional rules of error

preservation do not apply to claims of incompetency. State v. Lucas, 323 N.W.2d 228, 232 (Iowa 1982). Additionally, the statute tasks the court with *recognizing* when a defendant is suffering from a mental disorder rendering the defendant incompetent. Iowa Code § 812.3 (2015).

B. Standard of Review: The trial of an incompetent criminal defendant violates due process. State v. Lyman, 776 N.W.2d 865, 871 (Iowa 2010) (overruled on other grounds by Alcala v. Marriott Intern., Inc., 880 N.W.2d 699, 708 n.3 (Iowa 2016)). Because constitutional safeguards are implicated, appellate courts review the district court's decision on competency de novo. Id.

C. Discussion: The conviction of an incompetent defendant violates due process. Pate v. Robinson, 383 U.S. 375, 378, 86 S.Ct. 836, 838, 15 L.Ed.2d 815, 818 (1966); State v. Edwards, 507 N.W.2d 393, 395 (Iowa 1993). The basic test for competence is whether the defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding... and... a rational

as well as factual understanding of the proceedings against him." State v. Mann, 512 N.W.2d 528, 531 (Iowa 1994) (quoting Dusky v. United States, 362 U.S. 402, 402, 80 S.Ct. 788, 789, 4 L.Ed.2d 824, 825 (1960)). The defendant is presumed competent and has the burden of proving, by a preponderance of the evidence, that he is incompetent to stand trial. State v. Pedersen, 309 N.W.2d 490, 496 (Iowa 1981) (citations omitted).

Iowa Code Chapter 812 sets forth the procedure a district court must follow on questions of competency. Such procedure implements constitutional due process requirements. See Mann, 512 N.W.2d at 531. Chapter 812 provides that: If "probable cause" exists "at any stage of a criminal proceeding" that "the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense," the court, either on a defense motion or sua sponte on its own motion, "shall suspend further criminal proceedings", "order the defendant to

undergo a psychiatric evaluation", and then hold a competency hearing which includes consideration of such evaluation in determining whether the defendant is competent to stand trial. Iowa Code § 812.3 (2015) (requiring psychiatric evaluation upon probable cause of incompetency); § 812.4 (2015) (requiring hearing within fourteen days of arrival at psychiatric facility for evaluation); § 812.5 (2015) (providing the evidence received at the competency hearing "shall include the psychiatric evaluation").

"As a general rule, a competency hearing is required if the 'record contains information from which a reasonable person would believe a substantial question of the defendant's competency exists.'" Jones v. State, 479 N.W.2d 265, 270 (Iowa 1991) (quoting Kempf, 282 N.W.2d at 706). On appeal, the "'task is to examine the information before the trial court to determine if at the relevant time an unresolved question of the defendant's competency reasonably appeared.'" State v. Young, 2013 WL 5760959, at *3 (Iowa Ct. App. Oct. 23, 2013) (quoting Kempf, 282 N.W.2d at 707). The question is "whether

a reasonable judge, situated as was the trial court judge whose failure to conduct an evidentiary hearing is being reviewed, should have experienced doubt with respect to competency to stand trial." Mann, 512 N.W.2d at 531 (quoting Griffin v. Lockhart, 935 F.2d 926, 930 (8th Cir.1991)). This is a legal question and "the trial court's discretion does not play a role." Edwards, 507 N.W.2d at 395.

Factors bearing on whether a competency hearing is required include "(1) the defendant's apparent irrational behavior, (2) any other demeanor that suggests a competency problem, and (3) any prior medical opinion of which the trial court is aware." Young, 2013 WL 5760959, at *3 (quoting Mann, 512 N.W.2d at 531). Additionally, "an express doubt by the attorney for the accused is a legitimate factor to consider...." Griffin, 935 F.2d at 930.

In the present case, trial counsel expressed concerns and articulated facts demonstrating the need for a psychiatric evaluation and competency hearing. Trial counsel specified that Einfeldt had a history of mental health issues, and that

the stress of trial appeared to cause her to be incapable of aiding her attorney in her defense. He expressed concerns that she did not remember the events of the previous day, was unable to articulate some of her behaviors from the previous day, and appeared to be having disruptive thoughts and visions during trial. (Vol.4 Tr. p.565 L.10-18, p.566 L.15-p.570 L.19-23, p.571 L.3-8).

Einfeldt informed the court she had been treated for mental health issues, and had diagnoses of paranoid schizophrenia with manic bipolar, PTSD, and ADD. (Vol.4 Tr. p.574 L.1-11). She also has anxiety. (Vol.3 Tr. p.381 L.3-8). She told the court she has prescriptions for medications for her mental conditions, "but I don't have all of them, and I haven't been taking them for a couple months.... Because I don't have the money." (Vol.4 Tr. p.574 L.11-p.575 L.1). See State v. Burke, No. 12–0207, 2013 WL 2371240, at *6 (Iowa Ct. App. 2013) ("[T]he defendant informed the court that he had not received his medications. This should have been explored by the district court.").

Einfeldt was not able to recall the events of the prior day. She did not recall calling the prosecutor a liar during the State's opening statement, slamming her hand down on the desk, or being animated with her attorney. (Vol.4 Tr. p.566 L.13-18). She remembered some but not all of the testimony, pictures, and evidence presented by the State. (Vol.4 Tr. p.566 L.23-p.577 L.1). When asked if she thought her mental state was healthy enough to move forward or whether she was concerned similar things could happen today, she stated "I don't know. I want to go forward." (Vol.4 Tr. p.567 L.2-6).

Einfeldt exhibited irrational and paranoid behavior at that time. When asked by counsel if she could help him present her case by talking about issues and passing notes back and forth during trial, Einfeldt stated:

> A. No, because I don't want you reading my notes. I don't know if I trust -- I mean, I do. I think you're a good person. But I just want to kill you. I don't know you.

(Vol.4 Tr. p.568 L.7-15). She believed her attorney was giving the notes she wrote him during trial to the State or other

parties. (Vol.4 Tr. p.567 L. 6-10). She stated she'd wanted to stab her attorney in the neck with her pen. (Vol.4 Tr. p.568 L.11-14).[1] She had been hearing noises or buzzing the day prior when talking about the case with her daughters. (Vol.4 Tr. p.568 L.24-p.569 L.11). She stated that she didn't want to go to the hospital at Oakdale, and just wanted to finish the trial. She didn't want to answer any more questions on the competency issue. (Vol.4 Tr. p.569 L.23-p.570 L.4). She expressed that she didn't understand or know what was going on. (Vol.4 Tr. p.572 L.19-p.574 L.10).

Einfeldt exhibited additional irrational and paranoid behavior during later trial proceedings. She referenced contacting the FBI in regard to her criminal case. (Vol.4 Tr. p.573 L.14-16). She also referenced someone "poisoning the water." (Vol.4 Tr. p.570 L.11-12). She expressed suspicion about why proceedings were moving on and off the record. (Vol.4 Tr. p.799 L.16-19). She expressed suspicion about her

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[1] Trial counsel later specified to the court: "While I do appreciate her honesty about wanting to injure me, I don't believe nor have ever felt threatened by her." (Vol.4 Tr. p.570 L.24-p.571 L.2).

lawyer. (Vol.4 Tr. p.800 L.9-11). She expressed again that she did not understand what was going on. (Vol.4 Tr. p.799 L.10-p.800 L.11). She had a number of outbursts or interjected concerns throughout the course of trial, and walked out of ongoing proceedings at one point. (Vol.2 Tr. p.151 L.19-p.152 L.2; Vol.3 p.370 L.23, p.374 L.14, p.375 L.4-p.378 L.17, p.380 L.13-p.381 L.18, p.548 L.19; Vol.4 p.601 L.16, p.659 L.6, p.669 L.1-3, p.723 L.23, p.730 L.1, p.731 L.22, p.753 L.19, p.755 L.19-p.756 L.2, p.759 L.9-14, p.764 L.5-25, p.796 L.10-16, p.797 L.11-18, p.802 L.16-17; Vol.5 p.821 L.20, p.895 L.16-p.896 L.14, p.943 L.2-3; Vol.6 p.1116 L.13, p.1118 L.15, p.1126 L.5-6, p.1130 L.16, p.1132 L.25-p.1133 L.6, p.1141 L.7-18; Vol.7 p.1174 L.15). Einfeldt's outbursts were prominent and pervasive enough that both co-defendants moved for mistrial on multiple occasions – both before and after her counsel's request for Chapter 812 proceedings. See (Vol.3 Tr. p.378 L.18-p.380 L.6; Vol.4 Tr. p.683 L.23-p.686 L.20; Vol.6 p.1141 L.20-p.1142 L.14).

Additional information bearing on the competency issue was presented in the Presentence Investigation (PSI) Report. The PSI and attached information noted multiple past treatments for mental illness, and a hospitalization for mental illness while in a jail as an 18-year old. (PSI p.10, and attached Broadlawns Reports for 10/20/15 and 6/13/13) (Confid.App.47-55, 66). The PSI indicated Einfeldt had attempted suicide by slitting her wrists as a 19-year-old, an event Einfeldt denied at sentencing. (PSI p.10) (Confid.App.66); (Vol.7 Tr. p.1175 L.4-10). Einfeldt was diagnosed with Paranoid Schizophrenia in 2013, and that diagnosis continued at least into 2015. (2013 Broadlawns Report p.3; 2015 Broadlawns Report p.3; PSI p.13) (Confid.App.49, 53, 69). She'd had other episodes of paranoia in the past, and had been taking prescription medications "'on and off' for the past twenty years." (PSI p.10) (Confid.App.66). As of October 20, 2015, Einfeldt was on medication for Anxiety, Depression, and Bipolar Depression, and was prescribed additional medication for mood disorder. (2015

Broadlawns Report, p.3) (Confid.App.49). In 2013, she reported a belief that she'd been married to the devil. (2013 Report, p.2) (Confid.App.52). In 2013 and 2015, she'd reported hearing voices, including from the television. (2013 Report, p.2; 2015 Broadlawns Report, p.2-3) (Confid.App.48-49, 52).

In connection with an Iowa Mental Health Screen (IMHS) administered with the PSI, Einfeldt reported "multiple, and fairly significant, mood and/or anxiety disorder indicators" including "psychotic characteristics", causing the PSI investigator to "recommend[] that she be referred for a more formal diagnostic assessment with a licensed mental health professional...." (PSI p.13) (Confid.App.69). The PSI report noted "Mental Health" as an offender need, and recommended that she be ordered to "obtain a mental health evaluation and follow all recommendations." (PSI p.12-14) (Confid.App.68-70).

In again considering the competency issue at the time of sentencing, the district court noted that no competency

concerns were raised prior to trial. (Vol.7 Tr. p.1172 L.4-12). Defense counsel, however, had explained that the stress of trial had exacerbated Einfeldt's mental illnesses. (Vol.4 Tr. p.570 L.19-23). Additionally, a competency evaluation and hearing must be ordered "at any stage of a criminal proceeding" at which a substantial question of the defendant's competency arises. Iowa Code § 812.3(1) (2015). See also Drope v. Missouri, 420 U.S. 162, 181 (1975) ("Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial.").

Due Process principles impose on a district court a duty "to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial." Drope, 420 U.S. at 172 (citing Pate v. Robinson, 383 U.S. 375, 385 (1966)). Given the record facts, the trial judge was obligated to order a competency evaluation and hearing, and Einfeldt's statutory rights under Chapter 812 as well as her

constitutional due process rights were violated by the failure to do so. See Id.; Mann, 512 N.W.2d at 531.

As an initial matter, the district court erred in failing to suspend proceedings during trial to order a competency evaluation and hold a competency hearing. See Iowa Code §§ 812.3-812.5 (2015).

Alternatively, even if this Court determines it was not error to suspend *trial* proceedings, at minimum the district court should have ordered a *post-trial* but *pre-sentencing* competency evaluation and hearing. See Iowa R. Crim. P. 2.23(3)(c) ("If it reasonably appears to the court that the defendant is suffering from a mental disorder which prevents the defendant from appreciating or understanding the nature of the proceedings or effectively assisting defendant's counsel, *judgment shall not be immediately entered and the defendant's mental competency shall be determined* according to the procedures described in Iowa Code sections 812.3 through 812.5.") (emphasis added). As discussed above, additional information regarding Einfeldt's mental health came to light

via the PSI report. Einfeldt also explicitly renewed the competency challenge post-trial. (5/31/16 Mot. New Trial and Arrest of J, ¶2) (App.31).

Because of the difficulty of an ex post facto determination of competency, Einfeldt requests a new trial because her due process rights were violated when the court failed to order a competency evaluation. See State v. Myers, 460 N.W.2d 458, 460 (Iowa 1990) ("If the court of appeals was correct in concluding that matters known to the trial court mandated a hearing under section 812.3, then we believe the failure to hold such a hearing was probably not capable of being cured by an ex post facto determination of competency sometime after the trial was held."). Alternatively, Einfeldt requests a remand for the district court for a competency hearing; In the event her competency at trial cannot be determined retroactively on remand, that she should receive a new trial. See State v. Rhode, 503 N.W.2d 27, 33–34 (Iowa Ct. App. 1993).

D. Conclusion: Defendant-Appellant Wonetah Einfeldt respectfully requests that this Court reverse her conviction and remand for a new trial. Alternatively, she requests that this Court remand this matter to the district court for a competency evaluation and hearing.

II. THE DISTRICT COURT ERRED IN EXCLUDING EVIDENCE OF VINSON'S (1) PRIOR CONVICTIONS FOR WEAPON-RELATED OR ASSAULTIVE CRIMES, (2) THREATS AGAINST LACEY CHICOINE, AND (3) INVOLVEMENT IN A SUBSEQUENT SHOTS FIRED INCIDENT AT EINFELDT'S APARTMENT COMPLEX.

A. Preservation of Error: Error was preserved because the district court issued final rulings denying Einfeldt's request to introduce, in connection with her claim of self-defense, evidence of Vinson's (1) prior convictions for a weapons offense and an assault, (2) prior threats against Lacey Chicoine, and (3) involvement in a subsequent shots fired incident at Einfeldt's apartment complex. See (Vol.3 Tr. p.356 L.1-p.361 L.4) (prior convictions); (Vol.5 Tr. p.875 L.23-p.876 L.18, p.877 L.11-p.878 L.17) (threats against Lacey Chicoine and shots fired incident).

However, if this Court determines that error was not preserved for any reason, it is requested that Einfeldt's claim be considered under the Court's familiar ineffective assistance of counsel framework. When a claim of ineffective assistance of counsel is made, the Iowa Supreme Court allows an exception to the general rule of error preservation. State v. Lucas, 323 N.W.2d 228, 232 (Iowa 1982).

B. Standard of Review: Where preserved for appellate review, evidentiary rulings are reviewed for an abuse of discretion. State v. Nelson, 791 N.W.2d 414, 419 (Iowa 2010). An abuse of discretion occurs when the trial court exercises its discretion on grounds that are clearly untenable or clearly unreasonable. State v. Greene, 592 N.W.2d 24, 27 (Iowa 1999).

To the extent this issue is considered under an ineffective assistance of counsel framework, review is de novo. Taylor v. State, 352 N.W.2d 683, 684 (Iowa 1984). A defendant claiming a violation of his constitutional right to the effective assistance of counsel must establish: (1) counsel's

performance fell below an objective standard of reasonableness and (2) counsel's deficient performance prejudiced the defense. Id. at 685. Prejudice is established by showing "a reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 669, 104 S.Ct. 2052, 2055, 80 L.Ed.2d 674 (1984). A reasonable probability is one sufficient to undermine confidence in the outcome. Gering v. State, 382 N.W.2d 151, 153-54 (Iowa 1986).

C. Discussion:

1). Rule 5.405: Use of Specific Instances of Conduct to prove Character:

The district court ruled that the offered evidence would not be admissible as character evidence against Vinson in support of Einfeldt's self-defense claim. With respect to Vinson's prior assaultive and weapon-related convictions, the district court appears to have erroneously concluded that the convictions would not be admissible as character evidence

under rule 5.404. (Vol.3 Tr. p.358 L.7-p.359 L.1). With respect to Vinson's threats against Lacey Chicoine and the shots fired incident, the district court appears to have correctly recognized that the violent or aggressive character of the victim would be permissible under Rule 5.404 on the question of who is the first aggressor in a self-defense case, but erroneously concluded that such aggressive character could not be shown by specific acts pursuant to Rule 5.405. (Vol.5 Tr. p.872 L.21-p.876 L.18, p.877 L.11-25)

Iowa Rule of Evidence 5.404 generally prohibits the use of character evidence to prove a person acted in accordance with such character on a particular occasion. Iowa R. Evid. 5.404(a) (2015). However, an exception to that general rule applies in criminal cases to permit "evidence of a pertinent trait of character of the victim of the crime offered by an

accused." Iowa R. Evid. 5.404(a)(2)(A) (2015).[2]

In State v. Jacoby, our Iowa Supreme Court recognized that, where "the accused asserts he or she acted in self-defense", "[t]hen the violent, quarrelsome, dangerous or turbulent character of the [victim] may be shown" and is pertinent to two purposes: (1) "[I]f these character traits were known to the accused", then "[t]o show the state of mind of the defendant, the degree and nature of his or her apprehension of danger which might reasonably justify resort to more prompt and violent measures of self-preservation."; and (2) "As tending to prove who was the aggressor [in the encounter with the defendant]", "even if these character traits were unknown to the accused." Jacoby, 260 N.W.2d 828, 837 (Iowa 1977). See also State v. Dunson, 433 N.W.2d 676, 680-681 (Iowa 1988); State v. Webster, 865 N.W.2d 223, 243 (Iowa 2015).

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[2] The language of Rule 5.404 was modified by September 28, 2016 Order (effective January 1, 2017). However, even as newly modified the rule still provides, as an "Exception[]" to the general prohibition against character evidence, that in criminal cases "a defendant may offer evidence of the victim's pertinent trait...." Iowa R. Evid. 5.404(a)(2)(A)(ii) (2017).

In the present case, the district court appears to have recognized that an alleged victim's character for violence or aggressiveness is admissible under Rule 5.404 on the question of who is the first aggressor in a self-defense case. However, the district court erroneously concluded that under Rule 5.405 such violent or aggressive character of the victim may be proven only by reputation or opinion evidence, and not by specific acts. (Vol.5 Tr. p.873 L.1-p.874 L.6). In so-holding, the district court relied on State v. Jacoby, 260 N.W.2d 828, 838 (Iowa 1977), where it was stated to be "the rule in Iowa... that the quarrelsome, violent, aggressive or turbulent character of a homicide victim cannot be established by proof of specific acts."

Jacoby however was decided in 1977, well before the adoption of the Iowa Rules of Evidence in 1983. See Iowa R. Evid. Official Comment (1983) (outlining process underlying adoption). Subsequent to Jacoby, the Rules of Evidence were adopted, including what is now Rule 5.405 governing the "Methods of proving character." That rule provides that "[i]n

all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or... opinion." Iowa R. Evid. 5.405(a) (2015). It further provides, however, that "[i]n cases where character or a trait of character of a person *is an essential element of a* charge, claim, or *defense*, proof may also be made of specific instances of the person's conduct." Iowa R. Evid. 5.405(b) (2015) (emphasis added).

The question under Rule 5.405(b) is thus whether evidence of the complaining witness's character for violence or aggression is an "essential element" of the defense of self-defense. The Iowa Supreme Court resolved that question in State v. Dunson. There, the Court confronted, as a question of first impression, "Whether evidence of a victim's subsequent acts is admissible in a criminal case to prove the victim's aggressive and violent character at the time of the earlier crime." Dunson, 433 N.W.2d at 680. The Court there determined that both Rules 404 and 405 (now Rules 5.404 and 5.405) permit the admission of such evidence. First, the

Court held that Rule 404 permits the admission of such evidence because the evidence is "offered by the defendant" and "relates to a character trait of the victim: her aggressiveness and propensity for violence." Id. The Court determined such character can be shown by specific instances of conduct under then-Rule 405, which stated: "In cases in which character or a trait of character of a person *is an essential element of a* charge, claim, or *defense*, proof may also be made of specific instances of his conduct." Id. (emphasis added). Noting that Rule 405(b) "does not limit admissibility to past instances of conduct" and allows admission of subsequent instances of conduct as well, the Court held that "evidence of a victim's subsequent acts is admissible in a criminal case to prove the victim's aggressive and violent character at the time of the earlier crime." Id. at 680-681.

More recently in State v. Webster, 865 N.W.2d 223, 243 (Iowa 2015), the Iowa Supreme Court decided, consistently with Dunson, that "the trial court correctly found [a Victim's] act of striking his ex-wife was relevant to show [the Victim's]

violent/aggressive character" as "relevant to show [the Victim] was the first aggressor" in the incident with Defendant.

Although Dunson and Webster were brought to the attention of the district court, the district court determined that those decisions conflicted with Jacoby and that Jacoby controlled. (Vol.5 Tr. p.873 L.1-p.874 L.6). Such reasoning was in error. As discussed above, the 1977 decision in Jacoby predated the adoption of Iowa's Rules of Evidence, whereas such rules were already in effect at the time of Dunson and explicitly discussed therein. Moreover, Jacoby was specifically brought to the court's attention by the State's appellate brief in Dunson. The State there explicitly argued that "the quarrelsome, violent, aggressive or turbulent character of a... victim cannot be established by proof of specific acts" (citing Jacoby), and that the challenged specific act evidence "does not go to an essential element of self-defense" under what was then Rule 405(b). See Brief for Plaintiff-Appellee State of Iowa, State v. Dunson, No. 87-1412, at p.13-14 (filed June 30, 1988). Such argument was explicitly rejected by the Supreme

Court in Dunson. Finally, the fact that the same rule was again more recently applied by the Supreme Court in Webster supports the conclusion that it is Dunson and not Jacoby that controls.

By "cases in which character... is an essential element of a... defense" the rule appears to refer to circumstances wherein character or propensity evidence *goes to* an essential element. This reading of the rule is consistent with other Iowa caselaw holding specific acts admissible as an "essential element" of a defense. For example, in State v. Clay, 455 N.W.2d 272, 273 (Iowa Ct. App. 1990), the Court of Appeals held that "specific instances of [the victim's] conduct which were such as to make defendant reasonably fear for his safety" were admissible as "an essential element of a defense" of self-defense. While the victim's character is not *required* to be shown to make out a self-defense claim under such circumstances, the victim's character certainly *goes to* an essential element of the self-defense claim – whether the defendant "reasonably fear[ed] for his safety." See also State v.

Hannan, 1999 WL 710813, at *2 (Iowa Ct. App. July 23, 1999) (citing State v. Blanks, 479 N.W.2d 601, 606 (Iowa App. 1991) for proposition that "victim's prior assaults upon defendant and his girlfriend helped prove essential element of defendant's claim of self-defense").

Dunson is on point and controls. The district court thus erred in concluding that the violent or aggressive character of the alleged victim in a self-defense case cannot be proven by specific acts.

Even if Jacoby (and not Dunson) controls, however, the Court even in Jacoby noted as an exception that "specific acts to prove the victim's violent, dangerous, turbulent, or quarrelsome character, even though unknown to the defendant [at the time of the offense], are admissible if so closely related to the fatal event as to constitute part of the res gestae." Jacoby, 260 N.W.2d at 838 (citing State v. Beird, 92 N.W. 694, 696 (Iowa 1902) and State v. Hunter, 92 N.W 872, 874 (1902)). See also Beird, 92 N.W. at 696 ("both... acts and declarations of the deceased indicating a violent or aggressive

disposition at a time nearly connected with the affray" may be shown as part of the res gestae). Under this standard, at least the shots fired incident at Einfeldt's apartment would be admissible as part of the res gestae of the earlier altercation at Vinson's house. The shots fired incident occurred only three hours after the earlier fight, was only a few blocks away from the location of the earlier fight, and was in direct response to the earlier confrontation. (Vol. 4 Tr. p.598 L.17-20, Vol.5 Tr. p.844 L.4-7, Vol.5 Tr. p.912 L.10, p.952 L.1-3).

2). Rule 5.403: Probative Value vs. Prejudice:

The district court also reasoned that the evidence was inadmissible as more prejudicial than probative under Iowa Rule of Evidence 5.403. (Vol.3 Tr. p.356 L.1-p.359 L.9) (prior convictions); (Vol.5 Tr. p.875 L.23-p.876 L.18, p.877 L.11-25) (threats against Lacey Chicoine); (Vol.5 Tr. p.874 L.7-p.875 L.22) (shots fired incident).

Iowa Rule of Evidence 5.403 allow exclusion of otherwise relevant evidence "if its probative value is *substantially* outweighed by the danger of unfair prejudice...." Iowa R. Evid.

5.403 (emphasis added). "Probative value measures the strength and force of the evidence to make a consequential fact more or less probable." State v. Martin, 704 N.W.2d 665, 672 (Iowa 2005) (quotation marks and citation omitted). "Unfairly prejudicial evidence, on the other hand, appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action that may cause a jury to base its decision on something other than the established propositions in the case." Id. at 672-673 (quotation marks and citation omitted). Thus the question under Rule 5.403 is "whether the minute peg of relevancy will be entirely obscured by the dirty linen hung upon it." Id. (quoting State v. Wright, 203 N.W.2d 247, 251 (Iowa 1972)). Such standard was not satisfied so as to authorize exclusion of the evidence in the present case.

The prior convictions, threats against Lacey Chicoine, and the shots fired incident all had significant probative value in helping to establish that it was Vinson, and not the Defendants, who had acted as the first aggressor in the

altercation with Defendants. In addition, the prior weapons conviction and the subsequent shots fired incident also had significant probative value in that they would have connected Vinson to the use of a gun at the time of the altercation with Defendants. The shots fired incident was particularly compelling in this regard in that it connected Vinson to the use of a gun *close in time* to the altercation (just a few hours after).

With respect to Vinson's prior convictions (for a weapon offense and assault on a correctional officer), the court appears to have ruled that such information failed 5.403 balancing owing to the fact that the offenses were from more than ten years ago. (Vol.1 Tr. p.99 L.17-20, Vol.3 Tr. p.356 L.1-9). But because "character is a more or less permanent quality", State v. Dunson, 433 N.W.2d 676, 680-81 (Iowa 1988) (quoting 5 J.H. Wigmore, *Evidence* §1618, at 595 (Chadbourn ed. 1974)), the length of time does not substantially reduce the probative value of Vinson's convictions. That is, with regard to character evidence, "the

real question is of relevancy of this evidence to prove character, not of the character to prove the act." Dunson, 433 N.W.2d at 680. Convictions for a weapon offense and assault on a corrections officer are highly relevant to prove an aggressive and violent character. "Once a nexus for relevancy of prior conduct or character [of the victim] has been established... the issue of remoteness concerns the weight of the evidence and the credibility of the witnesses, both of which are within the province of the jury." Barnes v. Commonwealth, 197 S.E.2d 189, 190-191 (Va. 1973). The age of the convictions is thus not a basis for excluding them under Rule 5.403.

Regarding the threats against Lacey Chicoine, the evidence was highly probative in that it would have demonstrated Vinson's propensity for violence or aggression in connection with another woman's interaction with her boyfriend (Jake Peitzman) – the same circumstances that was said to have triggered her aggression against Danielle (and by extension Danielle's mother and sister). Indeed the altercation

with Defendants occurred just after Peitzman and Vinson broke up. (Vol.4 Tr. p.778 L.17-p.779 L.5). The court also later reasoned that, because Danielle ultimately testified to the existence of threats by Vinson against Chicoine, Chicoine's own testimony to the threats would be duplicative and unnecessary. (Vol.5 Tr. p.942 L.17-21). But Chicoine's testimony was crucial to corroborating Danielle's testimony about the threats, and also to describing the nature and extent of those threats. Compare (Vol.5 Tr. p.909 L.24-25) (Danielle's testimony) with (Vol. 4 Tr. p.793 L.19-p.794 L.23, p.796 L.1-5) (Lacey Chicoine's Offer of Proof testimony).

With respect to the shots fired incident, the district court concluded that such evidence failed the balancing test under the State v. Martin factors: "(1) the need for the proffered evidence in view of the issues and other available evidence, (2) whether there is clear proof it occurred, (3) the strength or weakness of the prior-acts evidence in supporting the issue sought to be prove[d], and (4) the degree to which the evidence would improperly influence the jury." Martin, 704 N.W.2d at

672 (internal quotation marks omitted). See (Vol.5 Tr. p.874 L.7-p.875 L.22).

Here, the first factor weighed heavily in favor of admission. The need for the proffered evidence was strong – the dispute at trial centered largely on the question of who acted as the first aggressor and whether the defendants acted in reasonable self-defense after being confronted by a gun.

As to the second factor, although Vinson disputed the claim of her involvement in the shots fired incident, there was more than adequate proof of her involvement to warrant allowing the jury to hear evidence of the incident. Both Beatrice and Jake Harker testified that they clearly saw Einfeldt peering inside their apartment window just before the shots were fired. (Vol.5 Tr. p.807 L.7-24, p.808 L.24-p.810 L.3, p.811 L.10-19, p.812 L.25-p.815 L.7, p.818 L.10-13, p.856 L.6-p.857 L.25, p.858 L.16-p.859 L.2, p.861 L.24-p.862 L.19). The shots fired incident occurred at 11:30 p.m., prior to the time Vinson would have been accounted for by appearing at the hospital at 12:45 a.m. (Vol.4 Tr. p.579 L.20-21; Vol.5

Tr. p.844 L.4-7). In the middle of the shell casings discovered at the apartment, law enforcement found a cigarette butt from a Kool brand cigarette. Officer Aswegan noticed the same type of cigarette butts at Vinson's home earlier in the evening, and Vinson admitted that she smokes that brand of cigarette. (Vol.5 Tr. p.833 L.15-p.835 L.6). The shell casings were also consistent and had "[v]ery similar characteristics" with the type of handgun Vinson admitted discharging with her boyfriend Jake Peitzman approximately two months earlier in May and which the Defendants claimed was also used during the altercation at Vinson's home. (Vol.5 Tr. p.831 L.3-p.833 L.9). Vinson and Peitzman were listed as suspects in the shooting by law enforcement. (Vol.5 Tr. p.830 L.3-10).

The third factor weighed heavily in favor of admission – Vinson's involvement in the shots fired incident was highly probative both (a) on the question of whether Vinson had a violent or aggressive character and thus had likely acted as the first aggressor in the earlier altercation with the defendants, and (b) in connecting Vinson to the use of a gun

close in time (just a few hours after) to the altercation in her home during which Defendants claimed Vinson had displayed a gun.

Finally, the fourth Martin factor did not support exclusion. In Commonwealth v. Adjutant, the Massachusetts Supreme Court rejected the suggestion that "juries invariably will be distracted by information about the victim's unrelated prior violence", reasoning as follows:

> This court has previously approved the admission of evidence of a victim's history of violence, when known to the defendant.[3] [...] If juries are capable of receiving such evidence for the limited purpose of evaluating the reasonableness of a defendant's apprehension, they are capable of weighing similar evidence relevant to the first aggressor issue. While we acknowledge that there is a possibility that juries may misunderstand the purpose for which the evidence is offered, and agree that they should be specifically instructed on that point, the greater danger here is prejudice to the defendant's case.

Com. v. Adjutant, 824 N.E.2d 1, 9 (Mass. 2005). The Massachusetts Supreme Court further stated a "preference... that the jury should have as complete a picture of the...

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[3] Iowa courts have similarly approved the admission of a victim's history of violence when known to the defendant. See e.g., Jacoby, 260 N.W.2d at 837.

altercation as possible before deciding on the defendant's guilt...." Id. at 9 (citing People v. Lynch, 470 N.E.2d 1018 (Ill. 1984): "To decide what really occurred the jury needed all the available facts, including evidence of [the victim's prior violence]."). "Moreover, admission of evidence showing the victim's prior violent acts on the first aggressor issue reflects the principle that 'in criminal cases there is to be greater latitude in admitting exculpatory evidence than in determining whether prejudicial potentialities in proof offered to show guilt should result in its exclusion.'" Id. at 10 (quoting Matter of Robert S., 420 N.E.2d 390, 394 (N.Y. 1981) (Fuchsberg, J., dissenting), citing 1 J. Wigmore, Evidence § 194 (3d ed.1940)). See also Lynch, 470 N.E.2d at 1021 ("Such evidence is ordinarily inadmissible against a defendant for the purpose of proving the offense charged, because the danger of prejudice outweighs the relevance of the evidence where the defendant stands to lose his liberty or even his life if convicted. Where the victim's propensity for violence is in question, however, the danger of prejudice to the defendant lies in refusing to admit

such evidence, while its high degree of relevance and reliability remains constant.").

Finally, as noted by trial counsel below, exclusion is allowed under Rule 5.403 only if the probative value is *substantially* outweighed (not merely outweighed) by the danger of unfair prejudice. (Vol.3 Tr. p.7-18). See Iowa R. Evid. 5.403 (2015) ("Although relevant, evidence may be excluded if its probative value is *substantially outweighed* by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."). That standard was not satisfied here.

The district court thus erred in excluding, on Rule 5.403 grounds, Vinson's prior weapon-related and assaultive convictions, her prior threats against Lacey Chicoine, and her involvement in the subsequent shots fired incident. Einfeldt was prejudiced by the error in that such evidence would have weighed heavily on her claim of self-defense. Even to the extent the issue is considered under an ineffective assistance

of counsel framework, confidence in the outcome is undermined and a new trial must be afforded.

D. Conclusion: Defendant-Appellant Wonetah Einfeldt respectfully requests that this Court reverse her conviction and remand for a new trial.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument if this Court believes it may be of assistance to the Court.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $ 6.16, and that amount has been paid in full by the Office of the Appellate Defender.

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